IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ELIZABETH HNILO and ROBERT HNILO,	)	
Plaintiffs,	)	CIVIL ACTION FILE
v.	)	NO. ______________
C. R. BARD, INC.,	)	
Defendant.	)	

COMPLAINT

COME NOW Elizabeth and Robert Hnilo as Plaintiffs herein and hereby file this Complaint, showing the Court as follows:

PARTIES, JURISDICTION AND VENUE

1.

Plaintiffs are citizens of the State of Florida.

2.

Defendant C. R. Bard, Inc. (“Defendant”) is a New Jersey corporation with its principal place of business in New Jersey. All acts and omissions of Defendant as described herein were done by its agents, servants, employees and/or owners, acting in the course and scope of their respective agencies, services, employments and/or ownership.

3.

Plaintiffs are seeking damages in excess of $75,000.00.

Subject matter jurisdiction is proper pursuant to 28 U.S.C. § 1332.

4.

Bard Urological, the division of Defendant C. R. Bard, Inc. that designed, manufactured, marketed, packaged, labeled and sold the product at issue in this lawsuit, is located in the Northern District of Georgia in Covington, Georgia.

5.

Defendant has significant contacts with the Northern District of Georgia such that it is subject to personal jurisdiction within said district.

6.

A substantial part of the events and omissions giving rise to Plaintiffs' causes of action occurred in the Northern District of Georgia.

7.

Pursuant to 28 U.S.C. § 1391(a), venue is proper in the Northern District of Georgia.

FACTUAL BACKGROUND

8.

Plaintiff Elizabeth Hnilo was implanted with the Avaulta Solo Anterior Synthetic Support System (the "Product") during surgery performed by Dr. Joseph Berger at Mercy Medical Center in Dubuque, Iowa.

9.

The Product was implanted in Plaintiff Elizabeth Hnilo to treat her pelvic organ prolapse, the use for which the Product was designed, marketed and sold.

10.

As a result of having the Product implanted in her, Plaintiff Elizabeth Hnilo has experienced significant mental and physical pain and suffering, has sustained permanent injury, and permanent and substantial physical deformity, has undergone or will undergo corrective surgery or surgeries, and has endured impaired physical relations with her husband, Plaintiff Robert Hnilo.

11.

Defendant designed, manufactured, marketed, packaged, labeled, and sold the Avaulta Solo Anterior Synthetic Support System, including the Product that was implanted in Plaintiff Elizabeth Hnilo.

CAUSES OF ACTION

COUNT I: NEGLIGENCE

12.

Plaintiffs incorporate by reference paragraphs 1-11 of the Complaint as if fully set forth herein.

13.

Defendant had a duty to individuals, including Plaintiff

Elizabeth Hnilo, to use reasonable care in designing, manufacturing, marketing, labeling, packaging and selling the Product.

14.

Defendant was negligent in failing to use reasonable care in designing, manufacturing, marketing, labeling, packaging and selling the Product.

15.

As a direct and proximate result of Defendant's negligence, the Plaintiff Elizabeth Hnilo was caused and/or in the future will be caused to suffer severe personal injuries, pain and suffering, severe emotional distress, financial or economic loss, including but not limited to obligations for medical services and expenses, present and future lost wages, and other damages.

COUNT II: STRICT LIABILITY – DESIGN DEFECT

16.

Plaintiffs incorporate by reference paragraphs 1-11 of the Complaint as if fully set forth herein.

17.

The Product implanted in Plaintiff Elizabeth Hnilo was not reasonably safe for its intended use and was defective as a matter of law with respect to its design.

18.

As a direct and proximate result of the Product's aforementioned defects, Plaintiff Elizabeth Hnilo was caused and/or in the future will be caused to suffer severe personal injuries, pain and suffering, severe emotional distress, financial or economic loss, including but not limited to obligations for medical services and expenses, present and future lost wages, and other damages.

19.

Defendant is strictly liable to Plaintiff Elizabeth Hnilo for designing, manufacturing, marketing, labeling, packaging and selling a defective product.

COUNT III: STRICT LIABILITY – MANUFACTURING DEFECT

20.

Plaintiffs incorporate by reference paragraphs 1-11 of the Complaint as if fully set forth herein.

21.

The Product implanted in Plaintiff Elizabeth Hnilo was not reasonably safe for its intended use and was defective as a matter of law with respect to its manufacture.

22.

As a direct and proximate result of the Product's aforementioned defects, Plaintiff Elizabeth Hnilo was caused and/or in the future will be caused to suffer severe personal injuries, pain and suffering, severe emotional distress, financial or economic loss, including but not limited to obligations for medical services and expenses, present and future lost wages, and other damages.

23.

Defendant is strictly liable to Plaintiff Elizabeth Hnilo for designing, manufacturing, marketing, labeling, packaging and selling a defective product.

COUNT IV: STRICT LIABILITY – FAILURE TO WARN

24.

Plaintiffs incorporate by reference paragraphs 1-11 of the Complaint as if fully set forth herein.

25.

The Product implanted in Plaintiff was not reasonably safe for its intended use and were defective as a matter of law due to its lack of appropriate and necessary warnings.

26.

As a direct and proximate result of the Product’s aforementioned defects, Plaintiff Elizabeth Hnilo was caused and/or in the future will be caused to suffer severe personal injuries, pain and suffering, severe emotional distress, financial or economic loss, including but not limited to obligations for medical services and expenses, present and future lost wages, and other damages.

27.

Defendant is strictly liable to Plaintiff Elizabeth Hnilo for designing, manufacturing, marketing, labeling, packaging and selling a defective product.

COUNT V: BREACH OF EXPRESS WARRANTY

28.

Plaintiffs incorporate by reference paragraphs 1-11 of this Complaint as if fully set forth herein.

29.

Defendant made assurances to the general public, hospitals and health care professionals that the Product was safe and reasonably fit for its intended purpose.

30.

Plaintiff Elizabeth Hnilo and/or her health care provider chose the Product based upon Defendant's warranties and representations regarding the safety and fitness of the Product.

31.

Plaintiff Elizabeth Hnilo, individually and/or by and through her physician, reasonably relied upon Defendant's express warranties and guarantees that the Product was safe, merchantable, and reasonably fit for its intended purpose.

32.

Defendant breached these express warranties because the

Product implanted in Plaintiff Elizabeth Hnilo was unreasonably dangerous and defective and not as Defendant had represented.

33.

Defendant's breach of its express warranties resulted in the implantation of an unreasonably dangerous and defective product in Plaintiff Elizabeth Hnilo's body, placing said Plaintiff's health and safety in jeopardy.

34.

As a direct and proximate result of Defendant's breach of the aforementioned express warranties, Plaintiff Elizabeth Hnilo was caused and/or in the future will be caused to suffer severe personal injuries, pain and suffering, severe emotional distress, financial or economic loss, including but not limited to obligations for medical services and expenses, present and future lost wages, and other damages.

COUNT VI: BREACH OF IMPLIED WARRANTY

35.

Plaintiffs incorporate by reference paragraphs 1-11 of this Complaint as if fully set forth herein.

36.

Defendant impliedly warranted that the Product was merchantable and was fit for the ordinary purpose for which it was intended.

37.

When the Product was implanted in Plaintiff Elizabeth Hnilo to treat her pelvic organ prolapse, the Product was being used for the ordinary purpose for which it was intended.

38.

Plaintiff Elizabeth Hnilo, individually and/or by and through her physician, relied upon Defendant's implied warranty of merchantability in consenting to have the Product implanted in her.

39.

Defendant breached this implied warranty of merchantability because the Product implanted in Plaintiff Elizabeth Hnilo was neither merchantable nor suited for its intended use as warranted.

40.

Defendant's breach of its implied warranty resulted in the implantation of an unreasonably dangerous and defective product in Plaintiff Elizabeth Hnilo's body, placing said Plaintiff's health and safety in jeopardy.

41.

As a direct and proximate result of Defendant's breach of the aforementioned implied warranty, Plaintiff Elizabeth Hnilo was caused and/or in the future will be caused to suffer severe personal injuries, pain and suffering, severe emotional distress, financial or economic loss, including but not limited to obligations for medical services and expenses, present and future lost wages, and other damages.

COUNT VII: LOSS OF CONSORTIUM

42.

Plaintiffs incorporate by reference paragraphs 1-11 of this Complaint as if fully set forth herein.

43.

As a direct and proximate result of the above-described injuries sustained by Plaintiff Elizabeth Hnilo, her husband, Plaintiff Robert Hnilo has suffered a loss of his wife's consortium, companionship, society, affection, services and support.

COUNT VIII: PUNITIVE DAMAGES

44.

Plaintiffs incorporates by reference paragraphs 1-43 of this Complaint as if fully set forth herein.

45.

Defendant knew or should have known that the Product was defective and presented an unreasonable risk of harm to Plaintiff Elizabeth Hnilo.

46.

Defendant's conduct as described in this Complaint, for which Plaintiffs are entitled to recover compensatory damages, manifested a conscious indifference to, and/or flagrant disregard of, the safety of those persons who might foreseeably have been harmed by the Product, including Plaintiff Elizabeth Hnilo, justifying the imposition of punitive damages.

COUNT IX: ATTORNEY'S FEES

47.

Plaintiffs incorporate by reference paragraphs 1-46 of this Complaint as if fully set forth herein.

48.

Plaintiffs seek their attorney's fees and expenses of litigation pursuant to O.C.G.A. § 13-6-11.

WHEREFORE, Plaintiffs demand trial by jury, judgment against Defendant for compensatory and punitive damages in an amount exceeding $75,000, as well as costs, attorney fees, interest, or any other relief, monetary or equitable, to which they are entitled.

PLAINTIFFS DEMAND A TRIAL BY JURY.

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